



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

MPA/163775

PRELIMINARY RECITALS

Pursuant to a petition filed February 4, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regards to the modification of prior authorized services coverage under Medical Assistance, a telephone hearing was held on February 25, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Division of Health Care Access and Accountability correctly modified and reduced the petitioner's prior authorization requested 26 hours of Personal Care Worker (PCW) services to 11.75 hours per week.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

Written Appearance By: Redact, R.N., Nurse Consultant
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a 58 year-old single female resident of Milwaukee County. She has chronic airway obstruction - severe [oxygen dependent] [also considered chronic obstructive pulmonary disorder (COPD)], with co-morbidities of anxiety and debility. She quit smoking in 2009. She has hypertension, generalized osteoarthritis, gout, GERD, allergic conjunctivitis, and a history of colonic polyps with removal, mycobacteria (lungs) and pneumonia. She has functional limitations

with ambulation, endurance and dyspnea with minimal exertion. She uses a cane and a back brace. She is 5'2" tall, and weighs 151 lbs. She eats a no-salt diet. She is documented as oriented, with anxiety. She takes Prilosec, aspirin, Allopurinol, potassium chloride, Spiriva, Hydrodiuril, Norvasc, Proventil, Claritin, Gas-X Ultra, Bonine, Klonopin, MAPAP Extra Strength, guaifenesin with codeine, Garamycin ointment, Zaditor ophthalmic solution, Flonase, and albuterol, a multivitamin, and she has continuous oxygen use. She uses a nebulizer four times per day. The extant physician orders prescribe 98 units per week of PCW services (not the 104 units requested by the home health provider). See, Exhibit #1, attachment 4, "Home Health Certification and Plan of Care", dated 12/3/2014; and see, Exhibit #1, attachment 6, Patient Visit Notes at p.2 of 2. See also, Exhibit #1, attachment 7, p. 3.

2. On November 3, 2014, the petitioner's physician, Dr. Reda Redact, referred her for an evaluation for the need for home health care assistance. See, Exhibit #2, at p. 5; and see Exhibit #3, p. 12.
3. On December 3, 2014, Dr. Redact authorized a Home Health Certification Plan of Care that stated as follows:

PERSONAL CARE WORKER SERVICES TO PERFORM UP TO 3.50 HOURS A DAY X 53 WEEKS. PCW TO PERFORM CARES WHICH ARE INCLUDED ON THE POC AS FOLLOWS: MEAL ASSISTANCE, BATHING, DRESSING, GROOMING, TOILETING, TRANSFERS, MEDICATION ASSISTANCE, BACK BRACE ASSISTANCE AND LIGHT HOUSEKEEPING RN TO CONDUCT SUPERVISORY VISIT Q 55-60 DAYS FOR EVALUATION OF CURRENT PLAN OF CARE.

See, Exhibit #1, Attachment 4.

4. On or about December 3, 2014, the petitioner's supervising nurse, Redact, R.N., performed a Personal Care Screening Tool Report about her, concluding that she requires 104 units or 26 hours of personal care worker services per week to meet her care needs, plus 96 units pro re nata services over the course of 53 weeks.
5. On or about December 5, 2014, the petitioner's home health care provider, Redact of Milwaukee, Wisconsin, submitted a Prior Authorization Request ("PA/R") form to the Department's Division of Health Care Access and Accountability, seeking approval of 3.7 hours per day, 26 hours per week, of personal care worker services for the petitioner, plus 28 units for travel time, per week, for a 53 week regimen. No PRN hours were requested.
6. On January 26, 2015, the Division of Health Care Access and Accountability issued a letter to the petitioner informing her that it had modified her PA/R amount and approved a reduced level of personal care worker services at the rate of approximately 1 hour, 40 minutes per day, or 11.75 hours per week. The DHCAA had determined that the reduced level of time was the most appropriate level of services under the Department's definition of medical necessity. The Department also denied the travel time coverage requested because some information in the record apparently caused it to believe the PCW caregiver lived in the home. The DHCAA reviewed medical records concerning petitioner's capabilities in its decision to reduce the hours.
7. On February 4, 2015, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the DHCAA reduction of authorized PCW services from 26 hours per week to 11.75 hours per week.
8. At the hearing held on February 25, 2014, the petitioner asserted that she really needed 28 hours per week of PCW services, but no PA/R amendment is on file for that level of services.

DISCUSSION

Personal care services are “medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community.” Wis. Admin. Code §DHS 107.112(1)(a). Covered services include the following:

1. Assistance with bathing;
2. Assistance with getting in and out of bed;
3. Teeth, mouth, denture and hair care;
4. Assistance with mobility and ambulation including use of walker, cane or crutches;
5. Changing the recipient's bed and laundering the bed linens and the recipient's personal clothing;
6. Skin care excluding wound care;
7. Care of eyeglasses and hearing aids;
8. Assistance with dressing and undressing;
9. Toileting, including use and care of bedpan, urinal, commode or toilet;
10. Light cleaning in essential areas of the home used during personal care service activities;
11. Meal preparation, food purchasing and meal serving;
12. Simple transfers including bed to chair or wheelchair and reverse; and
13. Accompanying the recipient to obtain medical diagnosis and treatment.

Wis. Admin. Code, §DHS 107.112(b).

Personal care workers can spend no more than one-third of their time performing housekeeping activities for a person living alone, and one-fourth of their time for a person living with other family members. Like all medical assistance services, PCW services must be medically necessary and cost effective. Wis. Admin. Code, §DHS 107.02(3)(e)1 and 3.

As drafted by the provider’s nurse assessor, the Personal Care Screening Tool showed a need for 26 hours per week in PCW service, plus 7 hours of travel time each week. The screening tool allocates a specific amount of time in each area the recipient requires help, and is filled out by a nurse assessor from the home health agency. The PCST is a Department-mandated computer program it believes allows an assessor to consistently determine the number of hours required by each recipient, but the Department reserves the right to make adjustments when its professional consultant reviews the clinical documentation as a whole.

The petitioner testified that she can toilet without assistance, and can perform transfers without assistance if she sits and collects herself first and does so slowly. She reports that she cannot wash or brush her hair, and needs assistance with that task, as well as with bathing once per day. She reports that after each bath she requires assistance to apply skin care lotion and mederma-like scar healing ointment due to past surgery. She reports that she can brush her teeth and clean her face. She reports that she requires meal preparation and setup, with food cut, for all meals, but that she can use a fork to eat independently. She reports that she can dress her upper extremities while sitting down, without help, but that she needs assistance with her low extremity dressing including putting pants on, stockings and shoes, and tying of shoes. She also reports that she needs assistance with errands, grocery shopping, changing the bed linens twice per week, laundry, mopping, house cleaning, cooking, meal preparation and cut up, vacuuming, and medication set up.

On its review, the DHCAA also used the Personal Care Screening Tool as a guide. The DHCAA’s reviewer can then adjust to account for variables missing from the screening tool’s calculations. Here, the DHCAA reduced the amount to 11.75 hours per week after reviewing petitioner’s medical records, the Personal Care Screening Tool, and the Maximum Allotment Table.

The DHCAA review gave 30 minutes per day for bathing and dressing (i.e., the maximum for one bath or shower), noting that dressing is considered a component of bathing. It gave an additional 10 minutes per day for lower extremity dressing, (i.e., the maximum allowable). See, Exhibit #1, attachment 8 (i.e., the “*Personal Care Activity Time Allocation Table*”). The Consultant awarded 10 minutes per day for placement of the back brace; and 15 minutes per day for medication assistance. She allotted no minutes for transferring, mobility, medical conditions, assistance with nebulizer, or toileting. These computations total 75 minutes of cares. The Consultant then applied the 1/3 limitation on incidental cares for a person living alone, and 25 minutes were allotted for incidentals. Thus, the total allocation was for 100 minutes per day. The Consultant noted that no minutes were awarded for assisting the petitioner with her four nebulizer treatments per day because there is no physician’s order for the nebulizer equipment, treatment or cares by a PCW to do the nebulizing. Likewise, no minutes were awarded for transferring assistance under the determination that the petitioner is getting one bath a day that includes all transfers related to bathing, and otherwise is transferring herself and ambulating with her cane without assistance. Finally, the petitioner does not possess any highly unusual medical or cognitive conditions that make the performance of any of her personal cares lengthy or slow due to these conditions. DHCAA also notes that the provider withdrew the request for mileage or travel time; and there is no request for as needed (PRN) hours in the PA Request.

The petitioner responds to the Consultant’s review by placing heavy emphasis on how much assistance she needs with housecleaning, laundry, cooking, vacuuming, meal preparation and setup, grocery shopping, errands, taking out the garbage and accompanying her to medical appointments.

It appears that this is a new referral for personal care worker services from this physician to the home health agency. This may indicate that the petitioner is relatively new and inexperienced as to what constitutes the appropriate coverage of personal care worker services and hours, and the 1/3 limitation on how much of the services can be for such homemaking chores. She also delineated her personal cares and the needs for assistance in her testimony as recounted above. I found her credible, but possessed of an overly expansive view of what MA covered PCW services encompass. PCW services are not the same as supportive home care whereby the PCW may be providing a majority of such housekeeping and cleaning services. Rather, PCW services are to primarily address the listed covered *personal cares* services contained in Wis. Admin. Code §DHS 107.112(1)(a), plus *incidental* services (i.e., laundry, cooking, cleaning, etc.) up to 1/3 of the total allotted for the covered services list. In addition, the physician does not order the use of the nebulizer in the referral for a PCW. See, Finding of Fact #3, above. None of these treatments are considered prescribed personal cares tasks under these facts. Rather, they are services the petitioner finds, understandably, helpful to her. But without a physician’s order, MA cannot cover them as personal cares. I also note that the petitioner’s testimony made it clear that she is adequately functional and mobile to ambulate, with her cane; and to perform the vast majority of her daily transfers when the PCW is not present, without assistance.

I have reviewed the evidence in this record carefully, and I must concur with the DHCAA decision.

I also observe that if it becomes apparent that the necessary (and prescribed) cares cannot be accomplished in the time allotted, or if petitioner has a change that negatively affects her health, a new request or amendment can be filed detailing why more time is needed.

CONCLUSIONS OF LAW

The DHCAA was correct in modifying the prior authorization requested PCW services from 26 hours per week to 11.75 hours per week, based upon petitioner’s medical records, her physician’s orders, and the 1/3 limitation for incidental tasks.

THEREFORE, it is

ORDERED

That the petition for review hereby be, and herein is, dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 5th day of March, 2015

\sKenneth D. Duren, Assistant Administrator
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 5, 2015.

Division of Health Care Access and Accountability